

JUDGE'S COPY

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

SEP 19 2001

MARY E. D'ANDREA, CLERK
Per [Signature]
Deputy Clerk

KEITH CROSBY,
Petitioner

v.

Civil No.: 1:CV-00-2211
(Judge Kane)

MICHAEL ZENK,
Respondent

**SUR REPLY TO PETITIONER'S MOTION TO EFFECTIVELY
DEFAULT THE RESPONDENT AND GRANT HABEAS CORPUS
RELIEF**

This is a habeas action brought by KEITH CROSBY, an inmate confined at the Allenwood Federal Correctional Institution in White Deer, Pennsylvania (Allenwood Med.). Crosby has filed a Motion to Effectively Default the Respondent and Grant Habeas Corpus Relief, claiming that respondent did not file or serve a response as ordered by the Court. Respondent argues that he did timely file a response, and the response was served upon Crosby at his current address. This Sur reply is filed in opposition to respondent's Motion.

STATEMENT OF FACTS

On December 20, 2000, Crosby filed petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. By order of June 4, 2001, respondent was ordered to respond to the allegations in the petition on or before June 25, 2001.

On June 21, 2001, respondent filed a Motion requesting a 20 day Enlargement of Time within which to respond to Crosby's petition. By order of June 27, 2001, the Motion was granted and respondent was ordered to respond to the allegations in the petition on or before July 16, 2001.

On July 16, 2001, respondent claimed to have filed his response to the petition for habeas corpus alleging that a copy of the response was served upon Crosby pursuant to Fed.R.Civ.P. 5(b).

Crosby filed the instant "Motion to Effectively Default the Respondent and Grant Habeas Corpus Relief", claiming that as of August 22, 2001, he was not served with respondent's response. Crosby's motion asks the Court to hold respondent in contempt and grant the habeas relief he requests.

ARGUMENT

Respondent's response to Crosby's Petition for Habeas Corpus was filed with the Court on July 16, 2001. Respondent claimed

that Crosby was served with the response on that same date, and that a Certificate of Service was attached to that response, certifying that Crosby was served at his current address by United States mail on July 16, 2001.

The respondent attempts to insult the Court by asking the Court to believe that respondent's response to Crosby's petition was filed with the Court on July 16, 2001 and on that same day, "Certifying that Crosby was served at his current address by United States mail on Jul6 16, 2001," see attached. A Certificate of Service only certifies that the respondent **said** that a copy of the response was mailed to Crosby, it does not certify that Crosby was in receipt of the response. However, the Federal Bureau Of Prisons has an established policy pursuant to 28 C.F.R. § 540.19 related to the handling of legal mail, in place. A case Manager or counselor is required to open the legal mail in the presence of the inmate to check for contraband. Second, the inmate signs his signature into a log book verifying that he or she received each piece of legal mail. The instant case shows no record of Crosby's receipt of the respondent's response dated Jul6 16, 2001.

CONCLUSION

For all the foregoing reasons, Crosby asks this Honorable

Court to ORDER the respondent to mail a copy of his response to Crosby's application for a Writ of Habeas Corpus, to the current address via Certified Mail. Crosby also asks the Court to grant him a reasonable amount of time within the rules to respond to the respondent's response.

Respectfully submitted,

Keith Crosby

Keith Crosby #29802-066

Date: September 14, 2001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of September, 2001, he served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below.

MATTHEW E. HAGGERTY
Assistant U.S. Attorney
228 Walnut Street, 2nd Floor
P.O. Box 11754
Harrisburg, PA 17108-1754

Keith Crosby
Keith Crosby #29802-066